

**United States Department of Labor
Employees' Compensation Appeals Board**

A.S., Appellant)
and)
DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
MATHER HOSPITAL, Mather, CA, Employer)
)

Docket No. 25-0638
Issued: September 8, 2025

Appearances:
Regina Crawford, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 18, 2025 appellant, through his representative, filed a timely appeal from a December 20, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days elapsed from the last merit decision, dated July 30, 2024, to the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, it was asserted that oral argument should be granted for him to explain the circumstances surrounding his failure to appear for the hearing. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

filings of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether OWCP properly determined that appellant abandoned his request for an oral hearing.

FACTUAL HISTORY

On February 16, 2023, appellant, then a 52-year-old housekeeping aid leader, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2023 he sustained injuries to his lower back and right-hand fingers when a coworker slammed his right hand in a cart door and pushed him while in the performance of duty. He stopped work on February 8, 2023.

OWCP received evidence in support of the claim.

By decision dated April 7, 2023, OWCP accepted that appellant was pushed by a coworker on February 7, 2023. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted February 7, 2023 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 7, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive additional evidence.

A hearing was held on September 19, 2023. Appellant subsequently submitted additional medical evidence.

By decision dated November 30, 2023, OWCP's hearing representative affirmed the April 7, 2023 decision in part, finding that the medical evidence of record was insufficient to establish a medical diagnosis of a physical condition in connection with the February 7, 2023 accepted employment incident. The hearing representative, however, also set aside the April 7, 2023 decision in part and remanded the case for a *de novo* decision regarding the emotional aspects of the claim.

OWCP subsequently received additional factual and medical evidence.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that appellant submitted additional evidence with her appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

By decision dated July 30, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed back pain, bipolar disorder, depression, PTSD conditions and the accepted employment factor(s).

On September 3, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By notice dated November 8, 2024, OWCP's hearing representative informed appellant that a telephonic hearing was scheduled for December 9, 2024, at 1:00 p.m. Eastern Standard Time (EST). The notice provided the toll-free number to call and the appropriate passcode to access the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the scheduled hearing.

By decision dated December 20, 2024, an OWCP hearing representative found that appellant had abandoned his request for an oral hearing as he had received written notification of the hearing 30 days in advance but failed to appear. The hearing representative further found that there was no indication in the case record that he had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.⁵ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁶ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁷

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.⁸

The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at a second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁹

⁵ 20 C.F.R. § 10.616(a).

⁶ *Id.* at § 10.617(b).

⁷ *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463(1991).

⁸ *Supra* note 9 at § 10.622(f).

⁹ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

The record establishes that, on November 8, 2024, in response to appellant's request for an oral hearing, a representative of OWCP's Branch of Hearings and Review properly mailed a notice of the scheduled telephonic hearing to be held on December 9, 2024, at 1:00 p.m., EST. The hearing notice was mailed to appellant at his last known address of record and provided instructions for his participation.¹⁰ Appellant, however, failed to appear for the scheduled hearing and did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing.

On appeal, appellant asserts that he was falsely imprisoned from December 12, 2024 through January 11, 2025. However, the Board notes that the scheduled hearing of December 9, 2024 was prior to his reported incarceration.

The Board, thus, finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

¹⁰ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018). Appellant did not submit evidence of nondelivery of OWCP's November 8, 2024 hearing notice such that the presumption of receipt would be rebutted.

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board